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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/978,235    11/25/97    MASS    N    1874-4014

EXAMINER
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IM22/1103

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ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/03/99

*67*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
08/978,235

Applicant(s)  
Mass et al.

Examiner  
Cheryl Juska

Group Art Unit  
1771



☒ Responsive to communication(s) filed on Sep 7, 1999

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) 5-8 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-4 and 9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A, submitted as Paper No. 6 on September 7, 1999, has been entered. The specification has been amended as requested. Claims 1 and 3 have been amended, while new claim 9 has been added. Thus, the pending claims are claims 1-4 and 9.

### ***Election/Restriction***

2. Claims 5-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to non-elected inventions. The election was confirmed **without** traverse in Paper No. 6, Amendment A.

### ***Specification***

3. Amendment A is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The amendments to define the term "shuss" as "transverse" and the term "franze" as "longitudinal" are considered new matter. Applicant has submitted Exhibit 1 as support for the translations of the terms "shuss" and "franze." Said Exhibit states that "franse" is equivalent to "pillar stitch" and "schuss" is equivalent to "weft." Thus, said Exhibit is insufficient evidence for

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said amendment to the specification. In particular, it is noted that the Applicant has different spellings for the two terms in question. Additionally, it is noted that the equivalent terms cited by the Exhibit are not the same terms Applicant amends to the specification. Therefore, said amendments are considered new matter. Applicant is required to cancel the new matter in the reply to this Office action.

With regard to overcoming said objection, and to prepare the specification for allowance, the following suggestions are made by the Examiner:

a. The Applicant should submit a statement that the spelling of said terms in the specification is erroneous and not that the intended spellings are as presented in Exhibit 1, if this is indeed the case.

b. This is a US application. Therefore, the terms employed should be standard English language terms. The Applicant should submit evidence of definitions of the German terms, which are equivalent to the terms the Applicant wishes to employ in said specification. A new search by the Examiner of said terms spelled as "schuss" and "franse" produced definitions of 'weft' and 'fringe,' respectively. (See LEO English/German Dictionary search and *Multilingual Glossary of Textile Terminology, German Entry Volume*, pages 94, 239, and 240. It is noted that the latter reference does not cite a specific definition for "schuss" but does include several terms which all relate to a filling or weft.) Thus, the Office agrees that the term "schuss" is equivalent to a weft or filling, which runs perpendicular to the selvage of a fabric. However, the evidence provided by

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the Applicant, as well as that provided by the Examiner, does not clearly support the term “franse” as being equivalent to a “longitudinal” yarn.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitations of claims 2-4 are not supported by the specification, as originally filed. Said objection is maintained from the last Office Action, section 8. To overcome said objection, Applicant should amend the specification to include the limitations of claims 2-4.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite, as set forth in section 12 of the last Office Action. In particular, it is unclear whether the phrase “at least one of said lateral polyolefin ribbons comprises a plurality of polyolefin ribbons” means (a) that a lateral ribbon which has a modified ribbon length is actually comprised of several polyolefin ribbons (a multi-filament), or (b) that more than one, or a plurality, of the lateral ribbons have a modified ribbon length. If the latter is the case, it is

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suggested that the claim be amended to read "...wherein a plurality of the lateral polyolefin ribbons have an actual ribbon length more than 110%...."

Claim 4 is indefinite, as set forth in section 15 of the last Office Action. Like claim 2, claim 4 is unclear whether "at least one of said lateral polyolefin ribbons comprises all of polyolefin ribbons" means (a) that a lateral ribbon which has a modified ribbon length is actually comprised of all polyolefin ribbons--in which case, the limitation is somewhat redundant--or, (b) that all of the lateral ribbons present in the netting have a modified ribbon length. If the latter is the case, it is suggested that the claim be amended to read "...wherein all of the lateral polyolefin ribbons have an actual ribbon length more than 110%...."

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,256,353 issued to Leiber et al. A discussion of the prior art with respect to Applicant's claim 1 can be found in section 17 of the last Office Action.

New claim 9 differs from claim 1 only in the terminology used to describe the ribbon length claimed. Thus, the invention of claim 9 is equivalent to the invention of claim 1. Claim 1 was previously rejected as being anticipated by the cited Leiber patent. It was argued that, although Leiber does not explicitly teach the claimed modification percentage, it is reasonable to

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presume that the invention of Leiber inherently possesses an actual ribbon length within the range claimed by the Applicant. Applicant has responded to said inherency argument by asserting that the claimed invention cannot be made by the Leiber patent because the claimed invention must be made on a modified Raschel knitting machine. The Examiner respectfully disagrees with said argument.

First, it is noted that the pending article claims do not contain process or apparatus limitations. Thus, said argument is outside of the scope of the claimed invention. Secondly, it is argued that any knit fabric, when removed from a knitting machine, will inherently contract from the absence of tension. Upon said contraction, lateral yarns, or ribbons, will become slack. Hence, the actual length of the lateral ribbons will be greater than the distance between the longitudinal ribbons, or the calculated ribbon length. Thus, it is reasonable to presume that the Leiber invention is inherently within the Applicant's claimed limitations. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

Applicant also argues the 102 rejection by noting that the claimed invention does not "narrow down" when stretched lengthwise, like the Leiber patent is known to do. In response to this argument, it is noted that this feature is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, claims 1 and 9 are rejected as being anticipated by the cited Leiber patent.

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***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Leiber patent. For the reasons present above in the rejection of claims 1 and 9, the rejection of claims 2-4 is being maintained from the last Office Action, section 19.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. Fax numbers for this Group are (703) 305-3601 and (703) 305-7718.

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER

cj 

October 29, 1999